RECORD AND BRIEFS

No. 15-1256

Supreme Court, U.S.
FILED
NOV 14 2016
OFFICE OF THE CLERK

In The Supreme Court of the United States

SHANNON NELSON AND
LOUIS ALONZO MADDEN,

Petitioners,

v.

COLORADO,

Respondent.

On Writ Of Certiorari To The Colorado Supreme Court

JOINT APPENDIX

FREDERICK R. YARGER
Counsel of Record
Solicitor General
OFFICE OF THE COLORADO ATTORNEY GENERAL
1300 Broadway
Denver, CO 80203
(720) 508-6000
Fred.Yarger@coag.gov

Counsel for Respondent

STUART BANNER
Counsel of Record
UCLA SCHOOL OF LAW
SUPREME COURT CLINIC
405 Hilgard Ave.
Los Angeles, CA 90095
(310) 206-8506
banner@law.ucla.edu

Counsel for Petitioners

Petition For Certiorari Filed April 6, 2016
Certiorari Granted September 29, 2016

TABLE OF CONTENTS

Page

APPENDIX – *Nelson v. Colorado*

Relevant Docket Entries, Shannon Nelson, Arapahoe County, 2004CR652 1

Relevant Docket Entries, Shannon Nelson, Colorado Court of Appeals, 2006CA1023 10

Relevant Docket Entries, Shannon Nelson, Arapahoe County, 2004CR652 (Second Trial) 11

Relevant Docket Entries, Shannon Nelson, Colorado Court of Appeals, 2011CA1206 (Second Appeal) 21

Relevant Docket Entries, Shannon Nelson, Colorado Supreme Court, 13SC495 (Second Appeal) 22

Determination of Probable Cause to Detain, Eighteenth Judicial District County of Arapahoe, March 11, 2004 23

Judgment of Conviction, District Court Arapahoe County, April 11, 2006 25

Motion for Restitution Findings and Order of Judgment, District Court Arapahoe County, July 5, 2006 29

Judgment of Conviction (Amended), District Court Arapahoe County, August 10, 2006 32

Judgment of Acquittal, District Court Arapahoe County, July 29, 2010 36

TABLE OF CONTENTS – Continued

Page

Motion for Return of Payments by Ms. Nelson Prior to Reversal of Judgement and Acquittal, District Court Arapahoe County, March 23, 2011 37

APPENDIX – *Madden v. Colorado*

Relevant Docket Entries, Louis Alonzo Madden, La Plata County, 2000CR76 46

Relevant Docket Entries, Louis Alonzo Madden, Colorado Court of Appeals, 02CA0024 49

Relevant Docket Entries, Louis Alonzo Madden, Colorado Supreme Court, 03SC771 50

Relevant Docket Entries, Louis Alonzo Madden, Colorado Court of Appeals, 02CA0024 51

Relevant Docket Entries, Louis Alonzo Madden, La Plata County, 2000CR76 52

Relevant Docket Entries, Louis Alonzo Madden, Colorado Court of Appeals, 09CA2081 (Second Appeal) 54

Relevant Docket Entries, Louis Alonzo Madden, Colorado Supreme Court, 13SC496 (Second Appeal) 55

Restitution, Victim Compensation Board, District Court La Plata County, September 25, 2001 56

Judgment of Conviction, District Court La Plata County, October 22, 2001 58

TABLE OF CONTENTS – Continued

Page

Order Assessing Costs Fines and Restitution, District Court La Plata County, October 22, 2001 60

Sentence Order, La Plata Combined Courts, September 09, 2005 63

Judgment of Conviction, La Plata Combined Courts, October 11, 2005 66

Order Regarding Defendant's Claims of Ineffective Assistance of Counsel, District Court La Plata County, April 10, 2009 68

Notice of Intent Not to Appeal or Retry Case, District Court La Plata County, May 11, 2009 75

Request for (1) Order that Mr. Madden is No Longer Required to Register (2) Refunding of Costs and Fees Assessed in this Case, District Court La Plata County, May 27, 2009 77

The following opinions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the Petition for Certiorari.

Trial Court Decision, *People v. Madden* (2009) ..... Pet. App. 74a

Trial Court Decision, *People v. Gonser [i.e., Nelson]* (2011) ..... Pet. App. 70a

People v. Madden, 2013 WL 1760869 (Colo. Ct. App. 2013) ..... Pet. App. 64a

TABLE OF CONTENTS – Continued

Page

People v. Nelson, 2013 WL 1760903 (Colo. Ct. App. 2013)..... Pet. App. 50a

People v. Madden, 364 P.3d 866 (Colo. 2015)..... Pet. App. 36a

People v. Nelson, 362 P.3d 1070 (Colo. 2015)..... Pet. App. 1a

Colorado Supreme Court order denying rehearing, *People v. Madden* (February 8, 2016)..... Pet. App. 78a

Colorado Supreme Court order denying rehearing, *People v. Nelson* (February 8, 2016)..... Pet. App. 77a

Shannon Kay Gonser

Arapahoe County

CASE NO. 2004CR652

RELEVANT DOCKET ENTRIES

03/11/2004 Affi in Suppt-Warrantless Arr

03/11/2004 Minute Order

HADV HELD

JUDGE FELDMAN CLERK ANS

PRESENT DDA SUGIOKA DEF I/C W/PD SHIMEALL

ADVISED OF RIGHTS, NATURE OF CHARGES, POSSIBLE PENALTIES, RIGHT TO PRELIM HRG FOC SET IN DIV 204 03/16/04 8:30; MPO ENTERED AND SERVED; BOND SET 10,000 CS; COND OF BOND PTS AND RUA'S; FPOR ORDER

FLG SET SLIP

FLG MPO

FLG APPLICATION FOR CT APPTD ATTY

FLG INFO RE BOND

FLG PRETRIAL RELEASE SERVICES CONDITION OF RELEASE

FLG PRETRIAL RELEASE SERVICES BOND REPORT

03/11/2004 Hearing on Advisement 03/11/2004 10:00 AM 204

Officer: ETHAN DAVID FELDMAN Length: 1.00 Hour(s)

Status.: HELD-Hearing Held

03/16/2004 Filing Other

FELONY COMPLAINT AND INFORMATION FILED BY DISTRICT ATTORNEY

02/17/2005 Minute Order

PRELIM HRG:HELD

JUDGE:FELDMAN CLERK:ANS

PRESENT: DDA COCHRAN DEF ON BOND W/ATTY STUART

PRELIMINARY HEARING HELD: PROBABLE CAUSE HAS BEEN SHOWN AS TO COUNTS 1 THROUGH 40 EXCEPT 31,32,33,34,35,40 ARE NOT SUBJECT TO PRELIMINARY HEARING: NOTE:PARTIES AGREE THAT PRELIMINARY HEARING WAS TO COUNTS 1 THROUGH 30 AS AMENDED AND COUNTS 36 THROUGH 39 AS ADDED

DEF BOUND OVER TO DISTRICT COURT FOR ARRAIGNMENT IN DIV 402 3/28/05 10:30AM

FLG: SETTING SLIP

03/28/2005 Minute Order

ARRAIGMENT [sic]

JUDGE SMITH CLERK MR REPORTER J. SCOTT

DEFENDANT APPEARS ON BOND W/COUNSEL MARTIN STUART.

DDA BRETT COCHRAN APPEARS.

DEFENDANT PLEADS NOT GUILTY WITH SPEEDY TRIAL DATE OF SEPTEMBER 28, 2005.

TRIAL IS SET FOR AUGUST 30, 2005, AT 9:00 A.M. FOR FIVE DAYS.

TRIAL CALL IS SET FOR AUGUST 26, 2005, AT 8:15 A.M.

HEARING ON MOTIONS IS SET FOR JUEN [sic] 24, 2005, AT 8:30 A.M. FOR ONE FULL DAY.

LARGE JURY PANEL WILL BE REQUIRED.

01/03/2006 Minute Order

JURY TRIAL GONSER/NELSON

JUDGE LEONARD CLERK JSK REPORTER T.KOEHLER

PRESENT: DDA C. SCHOBER, AMY RICHARDS, DEF (ON BOND) W/COUNSEL MARTIN STUART

PROCEEDINGS BEGAN FOR JURY SELECTION.

JURY SELECTED, JUORORS [sic] INSTRUCTED COURT WILL BEGIN TOMORROW AT 0830 AM

JURORS GIVEN INSTRUCTIONS.

01/04/2006 Minute Order

JURY TRIAL GONSER/NELSON

JUDGE LEONARD CLERK JSK REPORTER T.KOEHLER

PRESENT: DDA C. SCHOBER, AMY RICHARDS, DEF (ON BOND) W/COUNSEL MARTIN STUART

PEOPLE CALL WITNESS

#1 – VICTIM 4

#2 – VICTIM 1

#3 – VICTIM 3

#4 – VICTIM 2

#5 – LEE GONSER

#6 – JAMIE HARBOR

COURT ADJOURNS FOR DAY. COURT TO RESUME ON 010506 AT 0830 AM

01/05/2006 Minute Order

JURY TRIAL

JUDGE LEONARD CLERK JSK REPORTER T.KOEHLER

PRESENT: DDA C.SCHOBER, AMY RICHARDS, DEF (ON BOND) W/COUNSEL MARTIN STUART

PEOPLE CALL WITNESS

#7 – DIANA HARBOUR

#8 – MARGAREATTAE HEIL – RESEARCH/ SEXUAL VIOLENCE – DR

#9 – DR. SIROTNAK – PEDIATRIC CHILDRENS HOSPITAL

#10 – DR. JAMES FRANCE – COUNSELLOR

COURT ADJOURNS TO RESUME 010606 AT 0830

01/06/2006 Minute Order

JURY TRIAL

JUDGE LEONARD CLERK JSK REPORTER T.KOEHLER

PRESENT: DDA C. SCOBER [sic], AMY RICHARDS, DEF (ON BOND) W/COUNSEL MARTIN STUART

PEOPLE CALL WITNESS

#11 – RONALD CARSCALLEN – CBI

#12 – JOEL MCFARLAND – SOCIAL WORKER

#13 – DET. KEN HICKS – LITTLETON PD

#14 – ANN SMITH FORENSIC INTERVIEWER – SUNGATE

WATCHED SUNGATE INTERVIEW

COURT ADJOURNS TO RESUME ON 010906 AT 0845 AM

01/09/2006 Minute Order

JURY TRIAL

JUDGE LEONARD CLERK JSK REPORTER T.KOEHLER

PRESENT: DDA C.SCHOBER, A.RICHARDS, DEF (ON BOND) W. COUNSEL MARTIN STUART

PEOPLE RE-CALL WITNESS

#14 – ANN SMITH – SUNGATE

#15 – MICHAEL PETTINGER – ROCKY MT COMPUTER FORENSIC

#16 – CHARLES VOELMLE – SOUTHWEST COUNCELLOR [sic]

PEOPLE REST

DEFENSE CALLS WITNESS #1 – JAMIE HARBOR

DEF'S SECOND WITNESS DIDNT SHOW UP, JUDGE DISMISSES JURORS FOR DAY

COURT IS TO RESUME 011006 AT 0830 AM

01/10/2006 Minute Order

JURY TRIAL

JUDGE LEONARD CLERK JSK REPORTER T.KOEHLER

PRESENT: DDA. C.SCHOBER, A.RICHARDS, DEF (ON BOND) W/COUNSEL M.STUART

DEFENSE CALLS WITNESS #2 – DR. KATIE THACKER – CHILD COUNSELLOR

DEFENSE RESTS

JURY GIVEN INSTRUCTIONS

DA AND DEFENSE GIVE CLOSING ARGUMENT

JURY BEGIN DELIBERATIONS.

01/11/2006 Minute Order

JURY TRIAL

JURY RESUMED DELIBERATIONS AT 0830.

JURY REQUESTED TO WATCH SUNGATE VIDEO OF [VICTIMS 4, 3, AND 2]

01/12/2006 Minute Order

JURY TRIAL

JURY BEGINS DELIBERATIONS AT 0830 AM

JURY REQUESTS TO RE-VIEW SUNGATE VIDEO OF [VICTIM 2]

01/13/2006 Minute Order

JURY TRIAL

JUDGE LEONARD-ANTRIM CLERK JSK REPORTER C.ROBINS

PRESENT: DDA RICHARDS, SCHOBER, DEF (ON BOND)W/ CONSEL [sic] M.STUART

JURY CAME BACK WITH THEIR VERDICT GUILTY TO COUNTS: 15 SEX ASSAULT ON A CHILD – POSITION OF TRUST, W/PATTERN AND FORCE, COUNT 30 AGGRAVATED INCEST W/FORCE AND AGGRAVATION, COUNTS 31,32,33 CHILD ABUSE.

DEF PLACED INTO CUSTODY. DEF SCHEDULED FOR SENTENCING ON 040606 0830 AM

01/13/2006 Sex Offender Eval Ordered

01/13/2006 PSI Ordered

04/06/2006 Minute Order

SENTENCING

JUDGE LEONARD ANTRIM CLERK JSK REPORTER T.KOEHLER

PRESENT: DDA C.SCHOBER, DET. K.HICKS, DEF IN CUSTODY W/COUNSEL M.STUART

MOTIONS: IS DEF A SEXUALLY VIOLENT PREDATOR?

DEF EXERCISED HER RIGHT NOT TO DISCUSS THE CONVICTION IN THIS CASE FOR APPEAL

JUDICIAL ORDER: WILL RESERVE RULING UNTIL THE APPEALS PROCESS HAS BEEN DETERMINED.

MOTION AS TO COUNT 15 – PATTERN OF ABUSE

JUDICIAL ORDER – DOES FIND JURY CONVICED [sic] DEF ON PATTERN OF ABUSE

MOTION REQUESTING COURT APPOINTMENT OF PUBLIC DEFENDER

JUDICIAL ORDER: GRANTED

SPEAKING ON BEHALF OF DEFENDANT:

GARRY KILTNER – STEP FATHER

AUTUMN NELSON – SISTER IN LAW

SHAUN NELSON – BROTHER

ALLEN SMITH – FRIEND

GREG SHOPNER – FIANCE

SENTENCE**********

CT 15 – SEXUAL ASSLT ON A CHILD, POSITION OF TRUST W/PATTERN: DOC 20 YRS TO LIFE MANDATORY PAROLE OF 20 YRS TO LIFE (CONCUR W/CT 30)

CT 30 – AGG INCEST W/FORCE AND AGG: DOC 20 YRS TO LIFE (CONCUR W/CT 15)

MANDATORY PAROLE OF 20 YRS TO LIFE

CT 31,32, 33 – CHILD ABUSE: JAIL 6 MONTHS (CONSEC ON EA OF THOSE 3 COUNTS)

MANDATORY REGISTRATION REQUIREMENTS

PSC FOR 85 DAYS

RESTITUTION RESERVED FOR 90 DAYS

VCMP – 125.00

VASG – 162.50

CRTX – 35.00

TIME – 25.00

FLG: ADULT RECORD

07/05/2006 Motion

FOR RESTITUTION FINDINGS AND ORDER OF JUDGEMENT W/PROPOSED ORDER

07/21/2006 Filing Other

DA RESTITUTION RECAP

08/09/2006 Review 08/08/2006 06:00 AM 402

Officer: JUSTIN MARK HANNEN

Length: 1.00 Hour(s)

Status.: HELD-Hearing Held

Note..: MTN REST

08/10/2006 Order

FOR RESTITUTION IN THE AMOUNT OF $7845.00 GRANTED.

FLG: SIGNED ORDER

Shannon Nelson

Colorado Court of Appeals

CASE NO. 2006CA1023

RELEVANT DOCKET ENTRIES

DATE	DOCKET TEXT
05/22/2006	Notice of Filing of Appeal
03/04/2008	Opening Brief
08/13/2008	Answer Brief
10/29/2008	Reply Brief
04/09/2009	Opinion
07/21/2009	Mandate

Shannon Kay Gonser

Arapahoe County

CASE NO. 2004CR652
(Second Trial)

07/20/2009 Minute Order (No Print)

RECEIVED CALL FROM LYNETTE AT COURT SERVICES

DOC WILL NOT RELEASE DEFT.

CASE WILL BE SET FOR A NEW TRIAL PER COURT OF APPEALS MANDATE.

SENTENCE IS SET ASIDE ON ALL COUNTS.

07/16/2010 Minute Order

PRETRIAL CONFERENCE (STATUS)

JUDGE ANTRIM RPTR: T. BOOTH CLERK: MBH

PRESENT: DDA C.ALCOCK/G.DAWSON DEFENDANT ON BOND WITH COUNSEL M.STUART

COURT ANNOUNCES THAT CASE WILL GO TO TRIAL ON 07/20/2010

THE WITNESS ISSUE THAT THE PEOPLE HAVE WITH THE UNAVAILABILITY OF TWO WITNESSES WILL BE HANDLED BY HAVING THE TRIAL CONTINUED TO TUESDAY 7/27 FOR THE ADDTIONAL [sic] WITNESS TESTIMONY WITH THE TRIAL TO WRAP UP THAT DAY

THE COURT DOES NOT HAVE ANOTHER TRIAL BEGINNING SO THERE SHOULD BE NO OTHER CONFLICTS

PARTIES ANNOUNCE READY FOR TRIAL

1 HOUR FOR VOIR DIRE WITH 20 MINUTE OPENINGS

ALTERNATE IS JUROR # 8 WHEN THE JURY IS SWORN IN

DEFENDANTS BOND IS CONTINUED TO THE FIRST DAY OF TRIAL ON 07/20/2010

07/20/2010 Minute Order

JURY TRIAL DAY ONE

JUDGE: ANTRIM CLK: AJB RPTER: S.SMITH

PRESENT: DDA G.DAWSON/C.ALCOCK; DEFT ON BOND W/ATTY M.STUART

MINUTE ORDERS ON [VICTIM 1'S] CASE WILL BE COPIED FOR BOTH SIDES.

CHILD HEARSAY ISSUES.

JURY SELECTION.

OPENING STATEMENTS.

JURY ADMONISHED AND EXCUSED.

07/20/2010 Jury Trial 07/20/2010 08:30 AM 207

Officer: MARILYN LEONARD ANTRIM

Length: 1.00 Hour(s)

Status.: HELD-Hearing Held

Note.. : 4 DAYS

07/21/2010 Minute Order

JURY TRIAL DAY 2

JUDGE: ANTRIM CLK: AJB RPTER: S.SMITH

PRESENT: DDA C.ALCOCK/G.DAWSON; DEFT ON BOND W/ATTY M.STUART

PPL CALL:

[VICTIM 2]

[VICTIM 3]

[VICTIM 1]

LEE GONSER

DIANA HARBOUR

JURY ADMONISHED AND EXCUSED FOR THE DAY.

07/22/2010 Minute Order

JURY TRIAL DAY 3

JUDGE: ANTRIM CLK: AJB RPTER: M.BACHELLER

PRESENT: DDA C.ALCOCK/G.DAWSON; DEFT ON BOND W/ATTY M.STUART

PEOPLE CALL:

[redacted], AUNT OF VICTIM

[redacted], COUSIN OF VICTIM

ANN SMITH, FORMER EMPLOYEE OF SUNGATE CENTER

PEOPLE ADMIT EXHIBIT 16, VIDEO COPY OF SUNGATE INTERVIEW WITH [VICTIM 2]

EXHIBIT 16 IS PUBLISHED TO THE JURY, VIDEO IS PLAYED IN COURT

PEOPLE ADMIT EXHIBIT 17, COPY OF SECOND SUNGATE INTERVIEW WITH [VICTIM 2]

EXHIBIT 17 IS PUBLISHED TO THE JURY, VIDEO IS PLAYED IN COURT

EXHIBITS 21, 22, 23 – PAPERWORK FROM THE SECOND INTERVIEW ARE ADMITTED AND ARE PUBLISHED TO THE JURY

JURY IS RELEASED FOR LUNCH

CASE IS RECALLED AFTER BREAK

PEOPLE CALL:

RONALD CARSCALLEN, AGENT WITH COLORADO BUREAU OF INVESTIGATION

DR. JAMES FRANTZ, PSYCHOLOGIST WHO WORKED WITH THE VICTIM

JUST [sic] IS ADMONISHED AND EXCUSED FOR THE DAY

CASE WILL COTINUE [sic] AT 1:00 PM TOMORROW AFTERNOON

07/22/2010 Jury Trial 07/21/2010 08:30 AM 207

Officer: MARILYN LEONARD ANTRIM

Length: 1.00 Hour(s)

Status.: HELD-Hearing Held

Note..: 4 DAYS

07/22/2010 Jury Trial 07/22/2010 08:30 AM 207

Officer: MARILYN LEONARD ANTRIM

Length: 1.00 Hour(s)

Status.: HELD-Hearing Held

Note..: 4 DAYS

07/23/2010 Jury Trial 07/23/2010 08:30 AM 207

Officer: MARILYN LEONARD ANTRIM

Length: 1.00 Hour(s)

Status.: HELD-Hearing Held

Note..: 4 DAYS

07/23/2010 Minute Order

JURY TRIAL DAY 4

JUDGE: ANTRIM CLK: MBH RPTER: M.BACHELLER

PRESENT: DDA C.ALCOCK/G.DAWSON; DEFT ON BOND W/ATTY M.STUART

CASE IS RECALLED FOR THE DAY AT 1:00 PM

PEOPLE CALL:

SUVI MILLER, SOCIAL WORKER

PEOPLE REQUEST TO HAVE THE WITNESS QUALIFIED AS AN EXPERT

THE DEFENSE OBJECTS

COURT QUALIFIES THE WITNESS TO TESTIFY AS AN EXPERT IN THE AREAS OF TRAUMA – BOTH PHYSICAL OR SEXUAL ABUSE – TO CHILDREN AND IDENTIFYING CHILDREN WHO HAVE EXPERIANCED [sic] TRAUMA AND THE INSTANCES OF DELAYED DISCLOSURES

THE WITNESS IS QUALIFIED AS A 701 WITNESS IN THE ABOVE AREAS, AS WELL AS THE AREA OF PARTIAL DISCLOSURE

PEOPLE CALL:

DR. ANDREW SIROTNAK, PEDIATRICIAN AND A PROFESSOR OF PEDIATRICS AT THE COLORADO SCHOOL OF MEDICINE – CHILDRENS HOSPITAL IN AURORA, CO AND A DEPARTMENT HEAD AT THE CHILDRENS HOSPITAL

COURT RULES THAT THIS WITNESS IS A 701 WITNESS AND WILL NOT BE QUALIFIED AS AN EXPERT FOR PURPOSES OF TESTIMONY IN THIS TRIAL

JURY IS ADMONISHED AND DISMISSED FOR THE DAY AT 3:15 PM

07/27/2010 Minute Order

JURY TRIAL DAY 5

JUDGE: ANTRIM CLK: MBH RPTER: S.SMITH

PRESENT: DDA C.ALCOCK/G.DAWSON; DEFT ON BOND W/ATTY M.STUART

THE COURT RECEIVED A LETTER FROM JUROR # 20, VIA COURT STAFF WHEN HE ENTERED THE JURY ROOM TODAY

THE COURT REVIEWED THE LETTER, MADE COPIES FOR THE ATTORNEYS AND CALLED THE JURY INTO COURT TO QUESTION HIM FUTHER [sic] ON THE SITUATION

JUROR # 20 FEELS THAT HE CAN STILL BE FAIR IN DETERMINING A VERDICT

THE PEOPLE ARE CONCERNED THAT JUROR # 20 MAY NOT BE ABLE TO BE COMPLETLY [sic] FAIR

DEFENSE FEELS THAT, BASED ON THE LEGAL STANDARD, JUROR # 20 STATED THAT HE COULD BE FAIR

COURT WILL ALLOW THE JUROR TO STAY ON THE CASE

PEOPLE CALL:

KENNETH HICKS, DETECTIVE WITH THE LITTLETON POLICE DEPARTMENT

PEOPLE REST THEIR CASE

JURY IS EXCUSED FOR LUNCH

DEFENSE MAKES A MOTION FOR A JUDGMENT OF ACQUITTAL

COURT HEARS ARGUMENT FROM BOTH PARTIES

COURT DENIES THE DEFENSES MOTION, CITING THAT THERE IS SUFFICIENT EVIDENCE AND THIS CASE SHOULD GO TO THE JURY TO DECIDE

****

THE CASE IS RECALLED AT 1:00 PM

DEFENDANT IS ADVISED OF HER RIGHT TO TESTIFY OR NOT

THE DEFENDANT WILL WITHHOLD THAT DECISION UNTIL AFTER THE WITNESS FOR THE DEFENSE TESTIFIES

COURT FURTHER ADVISES THE DEFENDANT AND AFTER THIS WITNESS IS CALLED, THE DEFENSE WILL EITHER CALL THE DEFENDANT TO TESTIFY, OR REST THEIR CASE DEFENSE CALLS:

JOY HEMBY, INVESTIGATOR WITH THE DISTRICT ATTORNEYS OFFICE

DEFENSE RESTS

PEOPLE HAVE NO REBUTTAL WITNESSES

COURT REVIEWS THE JURY INSTRUCTIONS WITH THE JURY

CLOSING ARGUMENTS

JURY BEGINS DELIBERATIONS AT: 4:15 PM

07/28/2010 Minute Order

JURY TRIAL DAY

JUDGE: ANTRIM CLK: AJB RPTER: S.SMITH

PRESENT: DDA C.ALCOCK/G.DAWSON; DEFT ON BOND W/ATTY M.STUART

JURY RETURNS FOR CONTINUED DELIBERATIONS AT 830 AM

JURY QUESTION 1.

JURY RETURNS VERDICT NOT GUILTY ON COUNT 1-5.

JURY EXCUSED.

07/28/2010 JTRL DISPO-NOT GUILTY

07/29 2010 Order

JUDGMENT OF ACQUITTAL BASED UPON A NOT GUILTY VERDICT ENTERED BY THE JURY AS TO ALL COUNTS. BOND IS DISCHARGED.

ORDER SIGNED BY JUDGE ANTRIM ON 07/29/2010

MOTION FOR RETURN OF PAYMENTS BY MS NELSON PRIOR TO REVERSAL OF JUDGEMENT AND ACQUITAL [sic]

05/05/2011 Minute Order

HEARING

JUDGE ANTRIM RPTR: T. BOOTH CLERK: MBH DIV 207

PRESENT: DDA G.DAWSON DEFENDANT DOES NOT APPPEAR [sic]

COUNSEL FOR THE DEFENDANT M.STUART APPEARS

DEFENDANT IS NOT ON ANY SORT OF BOND ON THIS CASE – SHE IS GOING TO COLLEGE AND HAS A FINAL SCHEDULED FOR TODAY

COUNSEL FOR THE DEFNEDANT [sic] REQUESTS HER APPEARANCE BE WAIVED FOR TODAY.

COURT HEARS ARGUMENT ON THE MOTION FOR RETURN OF PAYMENTS BY MS. NELSON PRIOR TO REVERSAL OF JUDGEMENT AND ACQUITTAL

THE PEOPLE DO NOT FEEL THERE IS A STATUTE TO SUPPORT THE COURT IN RETURNING THE MONEY AND THE COURT HAS NO AUTHORITY

TO ORDER MONEY THAT HAS ALREADY BEEN PAID TO VICTIMS TO BE RETURNED

COUNSEL FOR THE DEFENDANT ARUGES [sic] THAT WAS PAID WAS IN RESTITUTION AND COURT COSTS ORDERED IN A CASE WHERE THE VERDICT WAS LATER REVERSED AND THAT MONEY SHOULD THEN BE RETURNED

THE COURT DENIES THE DEFENSES MOTION

RULING THAT THERE IS NO AUTHORITY TO HAVE THE MONEY RETURNED AND THAT SINCE THE MONEY WAS PAID DURING A TIME THAT A CONVICTION HAD BEEN ENTERED THAT IT SHOULD HAVE BEEN PAID SINCE A CONVTION [sic] WAS IN EFFECT

05/05/2011 Order

ORDER DENYING THE MOTION FOR RETURN OF PAYMENTS

COURT DENIES THE DEFENSES MOTION AFTER HEARING ARGUMENTS IN COURT

Shannon Nelson

Colorado Court of Appeals

CASE NO. 2011CA1206
(Second Appeal)

RELEVANT DOCKET ENTRIES

DATE	DOCKET TEXT
06/10/2011	Notice of Appeal
10/11/2011	Opening Brief
05/21/2012	Answer Brief
06/01/2012	Reply Brief
04/25/2013	Opinion

Shannon Nelson

Colorado Supreme Court

CASE NO. 13SC495
(Second Appeal)

RELEVANT DOCKET ENTRIES

DATE	DOCKET TEXT
07/26/2013	Petition for Writ of Certiorari
12/23/2013	Order of Court Granting Petition for Writ of Certiorari
08/08/2014	Opening Brief
12/08/2014	Answer Brief
04/13/2015	Reply Brief
12/21/2015	Opinion
02/01/2016	Petition for Rehearing
08/08/2016	Order of Court Denying Rehearing
02/10/2016	Mandate

EIGHTEENTH JUDICIAL DISTRICT
COUNTY OF ARAPAHOE LPD CASE # **2004000723**

Book # 200400003677
Last: GONSER
First: SHANNON
Middle: KAY
DOB: [redacted] Rcvd: 03/10/2004

DETERMINATION OF PROBABLE CAUSE TO DETAIN 04CR652-402

(Completed by arresting authority)

Arrestee **SHANNON KAY GONSER** DOB [redacted]

Address [redacted] SS#(DET#) [redacted]

[redacted] Date of Arrest _____

_____ Time of Arrest _____

Arresting agency **Littleton Police Department** Phone [redacted]

Arrested for **SEXUAL ASSAULT ON A CHILD BY ONE IN A POSITION OF TRUST** **18-3-405.3** CRS

CHILD ABUSE **18-6-401** CRS

_____ CRS

The above person is ordered to report to court as directed by the appropriate law enforcement authorities per the following information:

Date _____ Time _____

Court Location **7325 South Potomac Englewood, CO 80112**

(Completed by Judge)

Probable Cause Determination

On this date, the court has reviewed the relevant information pertaining to the arrest of the above individual and has determined:

☒ Probable cause to believe that this person has committed a crime does exist and there is reason to detain said person pending posting of bond or further court proceedings.

☐ Probable cause to believe that this person has committed a crime has not been shown and the person is ordered released pending further court proceedings and must appear before the court as directed above.

BY THE COURT: /s/ [Illegible] 204
Judge Division

3/11/04 0825
Date Time

Original: Court File
Copy 1: Arrestee copy
Copy 2: Detention Authority copy
Copy 3: District Attorney Copy

District Court, Arapahoe County, State of Colorado
Case# :D0032004CR000652 Div/Room: 402
JUDGMENT OF CONVICTION, SENTENCE Original

The People of Colorado vs
GONSER, SHANNON KAY

DOB [redacted] SID 887493

The Defendant was sentenced on: 4/06/2006

People represented by . . . : SCHOBER,CHRISTINE

Defendant represented by: STUART, MARTIN

UPON DEFENDANT'S CONVICTION this date of: 1/13/2006

The defendant was found guilty after trial of:

Count # 15 Charge: Sex Assault/Child/Position Trust-Pattern
C.R.S # 18-3-405.3(1), (2)(b) Class: F3
Date of offense(s): 1/12/1998 to 8/28/2003
Date of finding(s): 1/13/2006
Count # 30 Charge: INCEST/AGGRAVATED – DEFENDANT'S CHILD
C.R.S # 18-6-302(1)(a) Class: F3
Date of offense(s): 1/12/1998 to 8/28/2003
Date of finding(s): 1/13/2006
Count # 31 Charge: Child Abuse-knowing/ reckless-bodily inj
C.R.S # 18-6-401(1)(a), (7)(a)(V) Class: Ml
Date of offense(s): 1/12/1998 to 8/28/2003
Date of finding(s): 1/13/2006
Count # 32 Charge: CHILD ABUSE-KNOWING/ RECKLESS-BODILY INJ
C.R.S # 18-6-401(1)(a), (7)(a)(V) Class: M1

Date of offense(s): 1/12/1998 to 8/28/2003
Date of finding(s): 1/13/2006
Count # 33 Charge: CHILD ABUSE-KNOWING/ RECKLESS-BODILY INJ
C.R.S # 18-6-401(1)(a), (7)(a)(V) Class: M1
Date of offense(s): 1/12/1998 to 8/28/2003
Date of finding(s): 1/13/2006

IT IS THE JUDGMENT/SENTENCE OF THIS COURT that the defendant be sentenced to THE CUSTODY OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS

Department of Corrections 20.00 YRS-LF COUNT 15

CONCURRENT
WITH COUNT 30 CASE NUMBER:

Department of Corrections 20.00 YRS-LF COUNT 30

CONCURRENT
WITH COUNT 15 CASE NUMBER:

Jail 6.00 MONTHS COUNT 31

CONSECUTIVE CASE NUMBER: 652
TO COUNT 32 2004CR Arapahoe County

CONSECUTIVE CASE NUMBER: 652
TO COUNT 33 2004CR Arapahoe County

Jail 6.00 MONTHS COUNT 32

CONSECUTIVE CASE NUMBER: 652
TO COUNT 31 2004CR Arapahoe County

CONSECUTIVE CASE NUMBER: 652
TO COUNT 33 2004CR Arapahoe County

Jail 6.00 MONTHS COUNT 33

Credit for Time Served 85.00 DAYS COUNT 33

CONSECUTIVE TO COUNT 31 CASE NUMBER: 652 2004CR Arapahoe County

CONSECUTIVE TO COUNT 32 CASE NUMBER: 652 2004CR Arapahoe County

ALL JAIL SENTENCES ARE TO BE SERVED AT DOC /JSK

Plus a mandatory period of parole as required by statute.

Months on parole 0240

Court finds extraordinary aggravating circumstances.

Sex Offender Status: No SVP Finding Must Reg as SXOF

Assessed	Balance
$ 347.50	$ 347.50

THEREFORE, IT IS ORDERED the Sheriff of ARAPAHOE COUNTY shall convey the DEFENDANT to the following department TO BE RECEIVED AND KEPT ACCORDING TO LAW COLORADO STATE DEPARTMENT OF CORRECTIONS DIAGNOSTIC CENTER

ADDITIONAL REQUIREMENTS

The restraining order pursuant to C.R.S. 18-1-1001 shall remain in effect until final disposition of the action, or in the case of an appeal, until disposition of the appeal.

CT 15 & CT 30 MANDATORY PAROLE OF 20 YRS TO LIFE

JUDGMENT OF CONVICTION IS NOW ENTERED, IT IS FURTHER ORDERED OR RECOMMENDED:

DATE 4/11/06 NPT 4/6/06

JUDGE/
MAGISTRATE /s/ Marilyn Leonard Antrim
MARILYN LEONARD ANTRIM

[Certificate Of Sheriff Omitted]

COUNTY/DISTRICT COURT ARAPAHOE COUNTY, COLORADO Court Address: Arapahoe County Justice Center 7325 S. Potomac St., Centennial, CO 80112	
THE PEOPLE OF THE STATE OF COLORADO vs. **Defendant(s):** **SHANNON KAY GONSER**	COURT USE ONLY
Attorney: CAROL CHAMBERS, 18th Judicial District Attorney 7305 S. Potomac St., Suite 300, Centennial, CO 80112 Phone: (720) 874-8500 Atty. Reg. #: 14948	Case Number: **18004CR00652** Division/Ctrm **402**

MOTION FOR RESTITUTION FINDINGS AND ORDER OF JUDGMENT

(Filed Jul. 5, 2006)

CAROL CHAMBERS, District Attorney in and for the Eighteenth Judicial District, by and through her duly appointed Deputy District Attorney, respectfully requests this Court impose restitution as a provision of the defendant's sentence. As grounds therefore, the People state the following:

1. On April 6, 2006, defendant was found guilty of Sexual Assault on a Child-Position of Trust, (Count 15) Section 18-3-405.3(1)(2)(b), C.R.S. and was sentenced to 20 years to Life, Department of Corrections, mandatory parole of 20 years to Life. Defendant was also found guilty of Aggravated Incest, (Count 30) Section 18-6-302(1)(a), C.R.S. and sentenced to 20 years to Life, Department of Corrections, mandatory parole of 20 years to Life, concurrent to Count 15. Defendant also was found guilty of Child Abuse (Counts 31, 32, 33) and was sentenced to 6 months County Jail, with 85 days presentence confinement credit, consecutive with each of Counts 31, 32, 33. Defendant to comply with mandatory restitution requirements. The Court reserved restitution for 90 days and ordered defendant to pay surcharges and costs.

2. The People have now determined the restitution amount to be $ 7,845.00 based on documentation provided by the victims' father and his contractors. That documentation is attached to this motion.

3. Specifically, the People seek restitution for:

Exhibit 1	$2,090.00
Lee Gonser	(Victim #2-Thr Copays)
[redacted]	
Exhibit 2	$2,620.00
Rocky Mountain UFEW	(Victim #2-therapy)
[redacted]	$2,945.00
	(Victim #1-therapy)
	$5,565.00

Exhibit 3	$ 70.00
Southwest Counseling	(Victim #3-therapy)
Associates	$120.00
[redacted]	(Victim #1-therapy)
	$190.00

5. The People further request this Court to order defendant to pay restitution for actual costs of future mental health treatment of the following victim(s):

Victim #2, Victim #1 and Victim #3

WHEREFORE, the People respectfully request the Court to enter Restitution Findings and Order of Judgment as a provision of defendant's sentence, and that the Mittimus be amended to reflect the Court's Order.

CAROL CHAMBERS
District Attorney
Eighteenth Judicial District

Date 7/5/06

By /s/ [Illegible]
Deputy District Attorney,
Reg. # 30039
7305 S. Potomac St., Suite 300
Centennial, CO 80112
(720) 874-8500

District Court, Arapahoe County, State of Colorado
Case# :D0032004CR000652 Div/Room: 402
JUDGMENT OF CONVICTION, SENTENCE Amended

The People of Colorado vs
GONSER, SHANNON KAY

DOB [redacted] SID 887493

The Defendant was sentenced on: 4/06/2006

People represented by . . . : SCHOBER,CHRISTINE

Defendant represented by: STUART, MARTIN

UPON DEFENDANT'S CONVICTION this date of: 1/13/2006

The defendant was found guilty after trial of:

Count # 15 Charge: Sex Assault/Child/Position Trust-Pattern
C.R.S # 18-3-405.3(1), (2)(b) Class: F3
Date of offense(s): 1/12/1998 to 8/28/2003
Date of finding(s): 1/13/2006
Count # 30 Charge: INCEST/AGGRAVATED-DEFENDANT'S CHILD
C.R.S # 18-6-302(1)(a) Class: F3
Date of offense(s): 1/12/1998 to 8/28/2003
Date of finding(s): 1/13/2006
Count # 31 Charge: Child Abuse-knowing/ reckless-bodily inj
C.R.S # 18-6-401(1)(a), (7)(a)(V) Class: M1
Date of offense(s): 1/12/1998 to 8/28/2003
Date of finding(s): 1/13/2006
Count # 32 Charge: CHILD ABUSE-KNOWING/ RECKLESS-BODILY INJ
C.R. S # 18-6-401(1)(a), (7)(a)(V) Class: M1

Date of offense(s): 1/12/1998 to 8/28/2003
Date of finding(s): 1/13/2006
Count # 33 Charge: CHILD ABUSE-KNOWING/ RECKLESS-BODILY INJ
C.R.S # 18-6-401(1)(a), (7)(a)(V) Class: M1
Date of offense(s): 1/12/1998 to 8/28/2003
Date of finding(s): 1/13/2006

IT IS THE JUDGMENT/SENTENCE OF THIS COURT that the defendant be sentenced to THE CUSTODY OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS

Department of Corrections 20.00 YRS-LF COUNT 15

CONCURRENT
WITH COUNT 30 CASE NUMBER:

PER ORDER OF 8-10-06 RESTITUTION IN THE AMOUNT OF $7845.00 ADDED /SMZ

Department of Corrections 20.00 YRS-LF COUNT 30

CONCURRENT
WITH COUNT 15 CASE NUMBER:

Jail 6.00 MONTHS COUNT 31

CONSECUTIVE CASE NUMBER: 652
TO COUNT 32 2004CR Arapahoe County

CONSECUTIVE CASE NUMBER: 652
TO COUNT 33 2004CR Arapahoe County

Jail 6.00 MONTHS COUNT 32

CONSECUTIVE CASE NUMBER: 652
TO COUNT 31 2004CR Arapahoe County

CONSECUTIVE CASE NUMBER: 652
TO COUNT 33 2004CR Arapahoe County

Jail 6.00 MONTHS COUNT 33

Credit for Time Served 85.00 DAYS COUNT 33

CONSECUTIVE CASE NUMBER: 652
TO COUNT 31 2004CR Arapahoe County

CONSECUTIVE CASE NUMBER: 652
TO COUNT 32 2004CR Arapahoe County

Plus a mandatory period of parole as required by statute.

Months on parole 0240

Court finds extraordinary aggravating circumstances.

Sex Offender Status: No SVP Findng Must Reg as SXOF

Assessed	Balance
$ 8,192.50	$ 8,067.78

THEREFORE, IT IS ORDERED the Sheriff of ARAPAHOE COUNTY shall convey the DEFENDANT to the following department TO BE RECEIVED AND KEPT ACCORDING TO LAW COLORADO STATE DEPARTMENT OF CORRECTIONS DIAGNOSTIC CENTER

ADDITIONAL REQUIREMENTS

The restraining order pursuant to C.R.S. 18-1-1001 shall remain in effect until final disposition of the action, or in the case of an appeal, until disposition of the appeal.

CT 15 & CT 30 MANDATORY PAROLE OF 20 YRS TO LIFE

JUDGMENT OF CONVICTION IS NOW ENTERED, IT IS FURTHER ORDERED OR RECOMMENDED:

DATE 8/10/06 NPT 4/06/06

JUDGE/
MAGISTRATE /s/ Mark Hanner for
MARILYN LEONARD ANTRIM

[Certificate Of Sheriff Omitted]

DISTRICT COURT ARAPAHOE COUNTY, COLORADO 7325 South Potomac Street Centennial, Colorado 80112	
THE PEOPLE OF THE STATE OF COLORADO v. SHANNON GONSER nka Nelson Defendant.	↑ **COURT USE ONLY** ↑
	Case Number: 04CR652 Div.: 207

JUDGMENT OF ACQUITTAL

The Court hereby enters Judgment of Acquittal based upon **not guilty** verdict entered by the jury as to all counts. The bond is discharged.

Prepared in Chambers on July 29, 2010.

BY THE COURT:

/s/ Marilyn Leonard Antrim
Marilyn Leonard Antrim
District Court Judge

Certificate: Copies of the above order were mailed or sent via facsimile to counsel of record on July 29, 2010.

District Court, Arapahoe County, Colorado Arapaho County Courthouse 7325 S. Potomac St., Centennial, CO 80112	
THE PEOPLE OF THE STATE OF COLORADO Plaintiff v. **SHANNON NELSON** (AKA SHANNON GONSER) Defendant	σ COURT USE ONLY σ
Martin Stuart, #28852 955 Bannock Street, suite 200 Denver, CO 80204 Phone (303) 355-6789 Fax (303) 623-0714 E-mail: martinstuartlaw@ solucian.com	Case No.: **04CR652** Division **207**

MOTION FOR RETURN OF PAYMENTS BY MS. NELSON PRIOR TO REVERSAL OF JUDGMENT AND ACQUITTAL

(Filed Mar. 23, 2011)

Ms. Nelson, through counsel, herein requests return of all restitution, fines, fees, and other costs to Ms. Nelson which she paid prior to the Mandate reversing the trial court's judgment of conviction and subsequent acquittal, and as grounds states:

PROCEDURAL HISTORY OF THIS CASE

I. Charges and Not Guilty Plea

1. In March. 2004, Ms. Nelson was charged with several criminal counts. Ultimately, after amendments by the prosecution, Ms. Nelson was charged with the following: two counts of Sexual Assault on a Child under 15 – Position of Trust (F3), fifteen counts of Sexual Assault on a Child – Position of Trust – Pattern (F3), seventeen counts of Aggravated Incest (F3), four counts of Child Abuse – Knowingly or Recklessly Causing Bodily Injury (M1), and two Violent Crime sentence enhancers.

2. On March 28, 2010, Ms. Nelson pled not guilty to all charges.

II. Trial, Jury Verdicts, and Sentence

3. On January 13, 2006, a jury found Ms. Nelson guilty of the following five counts: Sexual Assault on a Child – Position of Trust – Pattern (count 15), Aggravated Incest (count 30) and Child Abuse Knowingly or Recklessly Causing Bodily Injury (counts 31, 32, and 33). The jury acquitted. Ms. Nelson on all other counts.

4. On. April 6, 2006, based on the jury verdicts, this Court sentenced Ms. Nelson to the Department of Corrections for 20 years to Life concurrent on counts 15 and 30, and 6 months jail concurrent on counts 31, 32, and 33. Ms. Nelson was also ordered to pay the following:

a. Victim Compensation Fund: $125.00

b. Victims' Assistance: $162.50

c. Court Costs: $35.00

d. Time Payment Fee: $25.00

e. Restitution was reserved and ultimately ordered in the amount of $7,845.00.

5. Ms. Nelson was ordered to pay a total of $8,192.50.

6. While in the Department of Corrections, Ms. Nelson paid a total of $681.35, applied in the following manner:

a. Victim Compensation Fund: $125.00

b. Victims' Assistance: $162.50

c. Court Casts: $35.00

d. Time Payment Fee: $25.00

e. Restitution: $390.67.

III. Appeal and Reversal

7. Ms. Nelson appealed her convictions to the Court of Appeals.

8. On July 22, 2009, the Colorado Court of Appeals issued a Mandate reversing judgment and remanding the case to the district court for a new trial.

9. The judgment of conviction, and therefore, Ms. Nelson's sentence, was reversed.

IV. New Trial and Jury Verdicts

10. On. January 1, 2011, Ms. Nelson pled not guilty to the remaining charges.

11. On July 28, 2010, a jury returned not guilty verdicts on the remaining five charges.

12. On July 29, 2010, this Court signed an Order of Judgment of Acquittal based upon a not guilty verdict entered by the jury as to all counts and discharged Ms. Nelson's bond.

LAW

I. Constitutional Provisions Require the Return of Ms. Nelson's Payments

13. The Constitutions of the United States and Colorado require the return of Ms. Nelson's restitution payments.

14. No person shall be denied property without due process of law. US Const. Amend. V and XIV § 1; Colo. Const. Article II § 25.

15. No private property shall be taken for private use without consent of the owner or without just compensation. Colo. Const. Art. II §§ 14, 15. No private property shall be taken for public use without just compensation. US Const. Amend, V; Const. Art. II §§ 14, 15.

II. Restitution Statutes and Court Opinions Require Return of Ms. Nelson's Restitution Payments

16. Colorado Revised Statute Sections 18-1.3-205 and 18-1.3-602 require trial courts to order restitution payments for the benefit of the party immediately and directly aggrieved by a defendant who is convicted of a criminal act. *People v. Robb*, 215 P.3d 1253, 1254 (Colo. App. 2009); *People v. Borquez*, 814 P.2d 382, 384 (Colo. 1991).

17. "Payment of restitution is authorized only as to the victim of a defendant's conduct, and only for the actual pecuniary damage the victim sustained as the direct result of the defendant's conduct." *People v. Robb*, 215 P.3d 1253, 1254 (Colo. App. 2009) (quoting *People v. Deadmond*, 683 P.2d 763 (Colo. 1984)); *see People v. Borquez*, 81.4 P.2d 382, 384 (Colo. 1991).

III. Victims' Assistance Statute, Victims' Compensation Statute, and Court Costs Statutes Require Return of Ms. Nelson's Payments

18. C.R.S. § 24-4.2-1.04(1)(a)(I) permits a surcharge to be levied on criminal actions only when resulting in conviction or in a deferred judgment and sentence, to be transmitted for credit to the victims and witnesses assistance and law enforcement fund.

19. C.R.S. § 24-4.1-119(1)(a) permits a cost to be levied on criminal actions only when resulting in conviction or in a deferred judgment and sentence, to be

transmitted for credit to the crime victim compensation fund.

20. C.R.S. § 16-18-101(1) requires costs in criminal cases to be paid by the state when a defendant is acquitted.

21. C.R.S. § 13-32-105 permits docket fees to be assessed in criminal actions in the amount of $30 and an additional $5 surcharge, payable only when there is a conviction of the defendant.

ANALYSIS

22. On July 22, 2009, the Court of Appeals reversed the judgment of the trial court. Therefore, all previous sentencing orders were reversed, including orders to pay restitution and other fines, fees, and costs.

23. Ms. Nelson cannot be ordered to pay restitution because she was not convicted of any crime. *Sec* C.R.S. § 18-1.3-205; C.R.S. §18-1.3-602; *People v. Robb*, 215 P.3d 1253, 1254 (Colo. App. 2009); *People v. Borquez*, 814 P.2d 382, 384 (Colo. 1991).

24. Ms. Nelson cannot be required to pay court costs, victims' compensation fund fees, victims' assistance surcharges, or time payment fees because she was not convicted of any crime. *See* C.R.S, § 16-18-101(1);§ 13-32-105; C.R.S. § 24-4.2-104(1)(a)(I); C.R.S. § 24-4.1-119(1)(a).

25. Because Ms. Nelson had already paid previously ordered amounts, those amounts must now be returned to her.

26. Failing to return the money Ms. Nelson paid toward restitution and other fines, fees, and costs under these circumstances would be contrary to C.R.S. § 18-1.3-205, C.R.S. § 181.3-601, C.R.S. § 18-1.3-602, C.R.S. § 16-18-101(1), C.R.S. § 13-32-105, C.R.S. § 24-4.2-104(a)(a)(I), C.R.S. § 24-4.1-119(1)(a) and the interpretations of these statutes by the Colorado Supreme Court and Colorado Courts of Appeals.

27. Failing to return the money Ms. Nelson paid toward restitution and other fines, fees, and costs under these circumstances would violate Ms. Nelson's right to due process of law. U.S. Const. Amends. V and XIV; Colo. Const. Article II § 25.

28. Failing to return the money Ms. Nelson paid toward restitution and other fines, fees, and costs under these circumstances would also constitute an illegal taking of private property for private or public use in violation of Amendment V to the United States Constitution and Article II Sections 14 and 15 of the Colorado Constitution.

29. Therefore, all payments taken. from Ms. Nelson that were applied to restitution and all other fines, fees, and costs must be returned to Ms. Nelson.

CONCLUSION

30. Ms. Nelson was originally found guilty of five counts by a jury and acquitted of the remaining charges. While serving her sentence in the Department of Corrections, Ms. Nelson paid $681.35 of the amounts she was ordered to pay.

31. On appeal, Ms. Nelson's convictions and sentences were reversed. On retrial, Ms. Nelson was acquitted of all remaining counts.

32. On July 29, 2010, this Court signed an Order of Judgment of Acquittal based upon a not guilty verdict entered by the jury as to all counts.

33. Therefore, the $681.35 Ms. Nelson paid as a result of a conviction later overturned and no longer valid must be repaid to her.

34. Not returning these amounts to Ms. Nelson would be contrary to Colorado Revised Statutes and holdings of Colorado Supreme Court and Colorado Court of Appeals cases interpreting these statutes.

35. Not returning these amounts to Ms. Nelson would violate Ms. Nelson's right to due process and right not to have her private property taken for private or public use without permission or just compensation as set forth in Amendments V and XIV of the United States Constitution and Article II Sections 14, 15, and 25 of the Colorado Constitution.

36. Therefore, the total sum of $681.35 must be returned to Ms. Nelson immediately.

WHEREFORE, Ms. Nelson requests that this Court order the restitution, fines, fees, and costs she paid in the amount of $681.35 be returned to her immediately.

/s/ [Illegible]
Martin Stuart, #28852

[Certificate Of Service Omitted]

Louis Alonzo Madden

La Plata County

CASE NO. 2000CR76

RELEVANT DOCKET ENTRIES

2000-02-29	Affi in Suppt-Warrantless Arr
2000-03-03	Complaint filed In open court. Copy given to Defendant.
2000-05-30	Bindover to dist ct after prel Probable cause found on Counts 2 and 3. No probable cause found as to Count 1
2000-05-30	Preliminary Hearing/Preliminary Hearing Held
2000-07-28	Arraignment/Hearing Held
2000-07-28	Minute Order Westberg/people; Ipson/defendant. Defendant waives advisement. Not guilty pleas entered. Case set for jury trial on November 20, 2000 at 9:00 a.m. To last three days, with pretrial conference on November 9, 2000 at 8:30 a.m. Instructions to be filed at pretrial. Motions by prosecution or defense, to filed within 45 days. Both sides to supply each other with witness lists, including known rebuttal witnesses, no later than 30 days prior to trial.
2001-06-12	Minute Order Peoples motion to continue and motion to amend are granted. Jury trial

	on 6/18/01 is vacated. Reset for jury trial to last 4 days commencing at 9:00 a.m. on July 23, 2001, with pre-trial conference on July 13, 2001, at 8:30 a.m. Instructions to be filed at pretrial.
2001-07-23	Jury Trial/Hearing Held
2001-07-24	Jury Trial/Hearing Held
2001-07-25	Jury Trial/Hearing Held
2001-07-26	Jury Trial/Hearing Held
2001-07-26	Jury returns verdicts of guilty to Attempted Patronizing of a Prostituted Child in violation of CRS 18-2-101 and 18-7-406(1)(a) as am (f4) and Attempted Sexual Assault in 3d Degree in violation of CRS 18-2-101 and 18-3-405.3(1)(2) as am (f5). Court enters judgment and conviction pursuant to the jury verdicts. Defts bond is discharged and he is remanded to custody of La Plata County Jail pending sentencing. Sentencing set for September 28, 2001, at 8:30 a.m. Probation to contact defendant at jail for presentence investigation, to include a sex offender evaluation.
2001-09-25	Report/Restitution Report
2001-10-19	Sentencing Hearing/Hearing Held
2001-10-19	Minute Order Westberg/people; Ipson/defendant/ custody. Defendant sentenced to the Dept of Corrections for six years

	minimum with the possible maximum of the remainder of the defendants natural life. Defendant to receive credit for time served since July 26, 2000. Restitution in the amount of $910 and costs to be endorsed on mittimus.
2001-10-22	Order/Assessing Costs Fines And Restitution

LOUIS MADDEN

Colorado Court of Appeals

CASE NO. 02CA0024

RELEVANT DOCKET ENTRIES

DATE	DOCKET TEXT
01/04/2002	Notice of Filing of Appeal
08/08/2002	Opening Brief
11/21/2003	Answer Brief
01/06/2003	Reply Brief
04/14/2003	Opinion

LOUIS MADDEN

Colorado Supreme Court

CASE NO. 03SC771

RELEVANT DOCKET ENTRIES

DATE	DOCKET TEXT
11/17/2003	People's Petition for Writ of Certiorari
11/25/2003	Defendant's Cross-Petition for Writ of Certiorari
04/05/2004	Order of Court Granting Petition and Cross-Petition for Writ of Certiorari
05/14/2004	People's Opening Brief
06/14/2004	Defendant's Combined Opening-Answer Brief
07/19/2004	People's Combined Answer-Reply Brief
08/06/2004	Defendant's Reply
04/18/2005	Opinion and Order Reversing Judgment
05/02/2005	Defendant's Petition for Rehearing
05/16/2005	Order of Court Denying Petition for Rehearing
05/19/2005	Mandate

LOUIS MADDEN

Colorado Court of Appeals

CASE NO. 02CA0024

RELEVANT DOCKET ENTRIES

DATE	DOCKET TEXT
07/21/2005	Opinion on Remand
09/19/2005	Mandate

Louis Alonzo Madden

La Plata County

CASE NO. 2000CR76

RELEVANT DOCKET ENTRIES

2005-10-11	Order/Resentencing
2007-10-18	Petition for post-conviction relief pursuant to Crim P 35(c)
2007-11-26	The court finds the Petition and Reply for post-conviction relief substantially conforms to Form 4 of the Colorado Rules of Criminal Procedure. The court finds the claims raised in Paragraph 1 do not state adequate legal grounds for relief under Rule 35(c). The court finds, however that claims raised in Paragraph 2 concerning ineffective assistance of counsel if true may be grounds for relief pursuant to 35(c). The Petition, Response, Reply and Application For Court Appointed Counsel are forwarded to Public Defender pursuant to Crim P 35(3)(v). Public Defender to inform the court within 45 days if defendant eligible for court appointed counsel and whether the Motion has arguable merit.
2009-03-27	Rule 35C Hearing/Hearing Held
2009-04-10	Order Regarding Defendants Claim of Ineffective Assistance of Counsel
2009-05-11	Notice filed of intent not to appeal or retry case

2009-05-27	Request filed for (1) Order that Mr. Madden is no longer required to register (2) Refunding of costs and fees assessed in this case
2009-06-23	Order/Mr. Madden no longer has to register as a sex offender in this case. Hearing set on motion to refund costs and fees.
2009-08-13	Hearing Note: Fees/Costs/Hearing Held
2009-08-14	Minute Order Due to the conviction being vacated and the case dismissed, the court orders the defendant be reimbursed $1,220.00 of the $1,977.75 paid in costs. fees and restitution. The court is denying the request to reimburse restitution of $757.75.

LOUIS MADDEN

Colorado Court of Appeals

CASE NO. 09CA2081
(Second Appeal)

RELEVANT DOCKET ENTRIES

DATE	DOCKET TEXT
09/28/2009	Notice of Filing of Appeal
06/29/2011	Opening Brief
07/13/2012	Answer Brief
07/26/2012	Reply Brief
04/25/2013	Opinion

LOUIS MADDEN

Colorado Supreme Court

CASE NO. 13SC496
(Second Appeal)

RELEVANT DOCKET ENTRIES

DATE	DOCKET TEXT
08/05/2013	Petition for Writ of Certiorari
12/23/2013	Order of Court Granting Petition for Writ of Certiorari
08/08/2014	Opening Brief
12/03/2014	Answer Brief
04/13/2015	Reply Brief
12/21/2015	Opinion
01/29/2016	Petition for Rehearing
08/08/2016	Order of Court Denying Rehearing
02/10/2016	Mandate

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address:1060 E. 2nd Ave, Durango, Colorado 81301 Phone Number:247-2304 ccccccccccccccccccc **Plaintiff(s):** **The People of Colorado** **Defendant(s):** **LOUIS MADDEN** ccccccccccccccccccc Attorney or Party Without Attorney: SARAH LAW/CRAIG WESTBERG Phone Number: 247-8850 Fax Number: 970-259-0200 E-mail: Atty. Reg. #: 04511	□ COURT USE ONLY □ ccccccccccc Div.: Ctrm.:

RESTITUTION **DEFENDANT: MADDEN, LOUIS**
CASE NUMBER: 00CR 76

ccccccccccccccccccccccccccccccccc

TOTAL DUE $910.00

ccccccccccccccccccccccccccccccccc

PAY TO:

Victim Compensation Board
PO Box 3455
Durango, CO. 81302

Therapy expenses paid **$910.00**

Victim's Name

Marty Goldfarb
Assistant Victim Witness Coordinator
September 25, 2001

cc: District Court, Probation

VICTIM COMPENSATION BOARD
SIXTH JUDICIAL DISTRICT
PO BOX 3455
DURANGO, CO 81301

September 25, 2001

TO: Marty Goldfarb

FROM: Carol Little

CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

This is a request for restitution to be ordered on behalf of Victim Compensation for the following defendant:

Lou Madden Case # 01CR136

The following expenses have been paid by Victim Compensation on behalf of the following victim:

Victim's Name	
Therapy expenses	$ 910.00
Total	$ 910.00

District Court, La Plata County, State of Colorado
Case#:D0342000CR000076 Div/Room: 1
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC
JUDGMENT OF CONVICTION, SENTENCE Original
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

The People of Colorado vs MADDEN, LOUIS ALONZO
DOB [redacted] SID XJ081536

(Filed Oct. 22, 2001)
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

The Defendant was sentenced on: 10/19/2001
People represented by . . . : WESTBERG, CRAIG
Defendant represented by: IPSON, KYLE
UPON DEFENDANT'S CONVICTION this date of: 7/26/2001
The defendant was found guilty after trial of:
Count # 2 Charge: PATRONIZING A PROSTITUTED CHILD-ATT
C.R.S # 18-7-406(1)(a) Class: F4
Date of offense(s): 1/20/2000 to 1/20/2000 Date of finding(s): 7/26/2001
Count # 3 Charge: SEX ASSAULT 3-EXPOSE TO CHILD-ATT
C.R.S # 18-3-404(1.5) Class: F5
Date of offense(s): 1/20/2000 to 1/20/2000 Date of finding(s): 7/26/2001
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

IT IS THE JUDGMENT/SENTENCE OF THIS COURT that the defendant be sentenced to THE CUSTODY OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS
DEPARTMENT OF CORRECTIONS 6.00 YRS-LF
COUNT 2

CONCURRENT WITH COUNT 3 CASE NUMBER: 2000CR 76 La Plata County
CREDIT FOR TIME SERVED SINCE 07-26-01 /DFS
DEPARTMENT OF CORRECTIONS 6.00 YRS-LF
COUNT 3
CONCURRENT WITH COUNT 2 CASE NUMBER: 2000CR 76 La Plata County
Plus a mandatory period of parole as required by statute.
Months on parole 0000
The Court has NO recommendation as to the Regimented Inmate Training Program

cccccccccccccccccccccccccccccccc

Assessed	Balance
$ 4,413.00	$ 4,413.00

cccccccccccccccccccccccccccccccc

THEREFORE, IT IS ORDERED the Sheriff of La Plata County shall convey the DEFENDANT to the following department TO BE RECEIVED AND KEPT ACCORDING TO LAW COLORADO STATE DEPARTMENT OF CORRECTIONS DIAGNOSTIC CENTER

cccccccccccccccccccccccccccccccc

ADDITIONAL REQUIREMENTS

CREDIT FOR TIME SERVED SINCE 07-26-01

cccccccccccccccccccccccccccccccc

JUDGMENT OF CONVICTION IS NOW ENTERED, IT IS FURTHER ORDERED OR RECOMMENDED:

DATE 10/22/01 NPT 10-19-01
JUDGE/MAGISTRATE /s/ Gregory G. Lyman
GREGORY G LYMAN

[Certificate Of Sheriff Omitted]

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. 2nd Ave., PO Box 3340, Durango, CO 81301 Phone Number: (970) 247-2304 CCCCCCCCCCCCCCCCCC **Plaintiff(s):** THE PEOPLE OF THE STATE OF COLORADO v. **Defendant(s):** **Louis Alonzo Madden** CCCCCCCCCCCCCCCCCC Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #.:	**COURT USE ONLY** CCCCCCCCCCC Case Number: 00CR76 Division: 1 Courtroom:

ORDER ASSESSING COSTS FINES AND RESTITUTION

(Filed Oct. 22, 2001)

The following court costs, fines, and restitution are hereby assessed and ordered to be paid by 5:00 p.m., the day of sentencing, to the Clerk of the Court:

Victim Compensation Fund:	$ 125.00
Victim Assistance Fund:	$ 125.00
Restitution:	$ 910.00

Probation Supervision Fee:	$
DSAS:	$ 45.00
DTST:	$ 25.00
Court Costs:	$ 30.00
Time Payment Fee:	$ 25.00
Drug Offender Surcharge:	$
Special Advocate Surcharge:	$ 1000.00
Sex Offender Surcharge:	$ 2000.00
Sex Offender Identification Fee:	$ 128.00
TOTAL DUE UPON SENTENCING:	**$ 4413,00**

IF YOU ARE UNABLE TO PAY THE FINES, COURT COSTS, AND RESTITUTION DUE AT THE TIME OF SENTENCING, YOU SHALL CONTACT THE COLLECTIONS INVESTIGATOR IMMEDIATELY AT (970) 247-2526. IF A PAYMENT SCHEDULE IS AUTHORIZED BY THE COLLECTIONS INVESTIGATOR, YOU SHALL MAKE ALL PAYMENTS AS ORDERED BY THE COLLECTIONS INVESTIGATOR. FAILURE TO DO SO WILL RESULT IN A BENCH WARRANT BEING ISSUED FOR YOUR ARREST. YOU MAY BE JAILED UNTIL YOU HAVE PAID IN FULL.

You shall keep the Court and the Collections Investigator advised of your correct address and telephone number at all times while this order is in effect. You must appear in Court in the future as directed by the Court. Notices will be sent in the mail.

DONE AND SIGNED BY THE COURT this 22nd day of ~~September~~ October, 2001.

/s/ Gregory G. Lyman
DISTRICT COURT JUDGE

Xc: Collections Investigator [✓]
D.A. [✓]
Probation Department
Defense Attorney – [IPSON]
Department of Corrections [✓]

LA PLATA COMBINED
COURTS, COLORADO

Court Address:
1060 E 2nd Ave
Room 106
Durango, CO 81301-5157

Phone Number: 970-247-2004

CCCCCCCCCCCCCCCCCCC

The People of Colorado
vs
MADDEN, LOUIS ALONZO

^ COURT USE ONLY ^
CCCCCCCCCCCC
Case Number:
2000CR000076

Division: 1

SENTENCE ORDER

Defendant: MADDEN, LOUIS ALONZO

Count	**Plea**	**Finding**
1 18-3-405.3(1)(2) – SEX ASSLT CHILD UND 15-POS TRUST-ATT		Dism by Court
2 18-7-406(1)(a) – PATRONIZING A PROSTITUTED CHILD-ATT	Plea Not Guilty	Dism by Court
3 18-3-404(1.5) – SEX ASSAULT 3-EXPOSE TO CHILD-ATT	Plea Not Guilty	Guilty

CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

ASSESED FINES & COSTS
Count # 2

Department of Corrections	
Victim Compensation Fund	$125.00
Victims Assistance Fund	$125.00
Court Costs – prior to 6/6/03	$30.00

Drug Standardized Assessment	$45.00
Drug Testing – Cost Recovery	$25.00
Request for Time to Pay	$25.00
Special Advocate Surcharge	$1,000.00
Sex Offender Surcharge	$2,000.00
Sex Offender I.D. Fund	$128,00
Restitution	$910.00
Count # 3	
Department of Corrections	
Department of Corrections: 3 YEARS	
TOTAL	**$4,413.00**

Concurrent with count 3 of case number 00CR76 in La Plata Combined Courts
Concurrent with count 2 of case number 00CR76 in La Plata Combined Courts
Concurrent with count 3 of case number 00CR76 in La Plata Combined Courts
Concurrent with count 2 of case number 00CR76 in La Plata Combined Courts
Concurrent with count 3 of case number 00CR76 in La Plata Combined Courts
Concurrent with count 3 of case number 00CR76 In La Plata Combined Courts

Other Conditions of Sentence:

JRW/BW 090905
DEFENDANTS JUDGMENT OF CONVICTION AS TO COUNT II IS DISMISSED. THE JUDGMENT OF CONVICTION OF ATTEMPED [sic] THIRD DEGREE SEXUAL ASSUALT [sic] IS REVERSED AND THE COURT RESENTENCES THE DEFENDANT TO 3 YEARS AT THE DEPARTMENT

OF CORRECTIONS WITH CREDIT FOR TIME SERVED SINCE 10-19-01 AND NO PAROLE. /BW

CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

LYMAN, GREGORY G	09/09/2005
Judge/Magistrate	**Date**
MADDEN, LOUIS ALONZO	09/09/2005
Defendant	**Date**

**********NOTICE**********

Following this hearing you are to present this form to the Clerk's Office for payment. Payment is due by the end of business on your Court Date. Failure to pay when due will result in additional costs pursuant to HB1198.

La Plata Combined Courts, State of Colorado
Case#:D0342000CR000076 Div/Room: 1
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC
JUDGMENT OF CONVICTION, SENTENCE Amended
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC
The People of Colorado vs MADDEN, LOUIS ALONZO
DOB [redacted] SID 1068665
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC
The Defendant was sentenced on: 9/09/2005 Sentenced Modified on:10/11/2005
People represented by . . . : WESTBERG, CRAIG
Defendant represented by: IPSON, KYLE
UPON DEFENDANT'S CONVICTION this date of: 7/26/2001
The defendant was found guilty after trial of:
Count # 3 Charge: SEX ASSAULT 3-EXPOSE TO CHILD-ATT
C.R.S # 18-3-404(1.5) Class: F5
Date of offense(s): 1/20/2000 to 1/20/2000 Date of finding(s): 7/26/2001
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC
IT IS THE JUDGMENT/SENTENCE OF THIS COURT that the defendant be sentenced to THE CUSTODY OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS
Department of Corrections 6.00 YRS-LF SET ASIDE
COUNT 2
CONCURRENT WITH COUNT 3 CASE NUMBER: 2000CR 76 d Courts
Department of Corrections 6.00 YRS-LF REVOKED
COUNT 3
Department of Corrections 3.00 YEARS
COUNT 3

CONCURRENT WITH COUNT 2 CASE NUMBER: 2000CR 76 d Courts
JRW/BW 090905
DEFENDANT'S JUDGMENT OF CONVICTION AS TO COUNT II IS DISMISSED. THE JUDGMENT OF CONVICTION OF ATTEMPED [sic] THIRD DEGREE SEXUAL ASSUALT [sic] IS REVERSED AND THE COURT RESENTENCES THE DEFENDANT TO 3 YEARS AT THE DEPARTMENT OF CORRECTIONS WITH CREDIT FOR TIME SERVED SINCE 10-19-01 AND NO PAROLE. /BW
The Court has NO recommendation as to the Regimented Inmate Training Program

CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

Assessed	Balance
$ 4,413.00	$ 2,498.33

CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

THEREFORE, IT IS ORDERED the Sheriff of La Plata County shall convey the DEFENDANT to the following department TO BE RECEIVED AND KEPT ACCORDING TO LAW COLORADO STATE DEPARTMENT OF CORRECTIONS DIAGNOSTIC CENTER

CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

ADDITIONAL REQUIREMENTS

CREDIT FOR TIME SERVED SINCE 10-19-01

CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

JUDGMENT OF CONVICTION IS NOW ENTERED, IT IS FURTHER ORDERED OR RECOMMENDED:

DATE 10/11/05 NPT 9/9/05
JUDGE/MAGISTRATE /s/ Jeffrey Raymond Wilson
Jeffrey Raymond Wilson

[Certificate Of Sheriff Omitted]

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. 2nd Ave., Durango, CO 81301 Phone Number: (970) 247-2304 **Plaintiff(s): People of the State of Colorado** **Defendant(s): Louis A. Madden** CCCCCCCCCCCCCCCCCC	**COURT USE ONLY** CCCCCCCCCCCC **Case Number:** 00CR76 Division: 4

ORDER REGARDING DEFENDANT'S CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL

(Filed Apr. 10, 2009)

This case came before the Court upon the defendant's C. R. Crim. P. 35(c) motion alleging his trial counsel provided ineffective assistance of counsel. After hearing the evidence and reviewing the transcript of the proceedings, the Court makes the following findings by a preponderance of the evidence:

The defendant was found guilty at trial regarding two felony counts, one of which was reversed on appeal, resulting from allegations of inappropriate sexual contact with a minor, S. J. S. J. at the time of the assault was a 14-year-old Navajo girl for whom English was a second language and who had an I.Q. in the low to mid 70's. She was residing in a group home to receive drug treatment, and evidence indicated that she had some

sort of court proceedings the week the assault occurred. The evidence supporting the conviction consisted of the complaints of S. J., who testified that the defendant while driving a trolley made suggestive comments to her when she entered the trolley. When S. J. was the only passenger on the trolley, the driver parked near a normal trolley stop, pushed S.J. against a window of the trolley, ordered S. J. to remove her pants, and when she wouldn't, masturbated on her stomach.

S. J. did not immediately report the assault, but her group home mother noticed that S. J. seemed angry when she came home and stayed in her room for the evening. Both the group home mother and S. J. independently recorded the date of the assault as being on January 20, 2000, S. J. testified both that she recorded the date on the day after the incident and that she recorded it a few weeks later. The group home mother testified that she did not immediately record the night that S. J. came home angry and was not sure when exactly she noted it on S. J.'s log. S. J. reported the assault to the group home mother approximately two weeks after the assault and the group home mother took S. J. to the Durango Police Department the next day.

Based upon S. J.'s report, Detective Lammon prepared a photo lineup that contained the pictures of two trolley drivers along with four other individuals that roughly matched S.J.'s description of the assailant. Records of Durango Transit indicated that both of the trolley drivers in the lineup had worked on January 20th. S. J. was unable to pick her assailant out of the

lineup, Detective Lammon then prepared a different photo lineup containing six individuals. In this second photo lineup, S. J. picked out the defendant as her assailant. The records of Durango Transit clearly indicate that the defendant had not worked on January 20, 2000, but had driven the trolley on January 21, 2000.

Due to discrepancy in the dates and the absence of scientific evidence, the strength of S. J.'s identification of the defendant as being her assailant was crucial to both the prosecution and the defense. At the C. R. Crim. P. 35(c) hearing, the current attorney made various arguments that the defendant's trial counsel was ineffective. The most critical of these arguments were that:

1. Defense counsel introduced testimony that the defendant may have destroyed evidence that was inculpatory toward him;

2. Defense counsel introduced evidence of the defendant previously making inappropriate sexual remarks to a woman while he was working as a bus driver;

3. Defense counsel failed to object when the prosecutor asked the defendant on cross-examination questions that indicated the prosecutor had knowledge of other inappropriate sexual conduct by the defendant, and by failing to object when the prosecutor made references to the defendant's "sexual problems" during closing argument[1];

---

[1] Although the defendant's trial counsel did not make a very clear record, it appears to the Court that he did object to these

4. Defense counsel failed to object to a police officer testifying that S. J. was "honest" when being interviewed, as well as other inappropriate comments on S.J.'s credibility;

5. Defense counsel failed to object and obtain a curative instruction from the court when Detective Lammon testified on the direct examination of the prosecutor that the defendant discussed taking a polygraph and allowing more references into evidence and argument about polygraphs and lie detectors, some of which were initiated by defense counsel.

In a proceeding under C. R. Crim. P. 35(c), the burden of proof is upon the defendant to show by a preponderance of the evidence that the conviction was invalid. *People v. Naranjo,* 840 P.2d 319 (Colo. 1992), The defendant must show that defense counsel's trial performance was deficient and fell outside the normal range of competence for defense attorneys. In addition, the defendant must show that but for trial counsel's deficient performance at trial, there is a reasonable probability the jury would have reached a different verdict. *Strickland v. Washington,* 466 U.S. 668 (1984); *People v. Garcia,* 815 P.2d 937 (Colo. 1991).

The defendant has clearly shown that trial counsel's performance was deficient. On cross-examination defense counsel prompted a witness to testify to a rumor that the defendant was seen burning a red shirt

---

references at bench conferences that are not on the record. See p. 548 of the transcript. The Court will not consider this claim on the motion for ineffective assistance of counsel.

with the brand Budweiser imprinted upon it that S.J. testified her assailant had been wearing. Tr. pp. 412-413. This allowed the prosecutor to cross-examine her about the rumor, Tr. p. 418, and bring it to the jury's attention once again, even though the rumor was inadmissible double or triple hearsay. In addition, trial counsel injected questions and later testimony from the defendant that he had previously been accused of and subjected to discipline by his former employer for making inappropriate sexual remarks when driving a bus for said previous employer. Tr. pp. 529, 589, 603, and 619-620. Trial counsel testified at the 35(c) hearing that he had strategic reasons for introducing such evidence. However, the evidence was extremely damning and defense counsel could have easily attempted to achieve his strategic goals through defense normal cross-examination.

Officer Warfield's comment that S.J. was truthful, Tr. p. 344, was clearly objectionable and trial counsel should have asked the court to immediately instruct the jury that they were to ignore the remark and that the jury was the sole judge of the credibility of all the witnesses. Trial counsel should have objected at the first mention of a polygraph or lie detector and requested the court give a cautionary instruction to the jury. The repeated reference by the prosecutor without objection and the prosecutor's introducing evidence that the defendant refused to take a polygraph left the inference that the defendant was lying when he denied that he committed the crime. Instead of objecting and asking for a cautionary instruction, the defense

counsel increased the prejudice to his client by asking both Detective Lammon and the defendant questions about the offer to take a polygraph, trying to explain the defendant's decision not to take one. Tr. pp. 492, 547(twice), 548, 555, 558, 602, 604-605, 626, 628, and 656-657.

The Court has been unable to find any reported case where polygraphs were mentioned as much as in this trial. The admission of polygraph evidence was discussed in *People v. Kerber,* 64 P.3d 930 (Colo.App. 2002):

> Lie detector or polygraph evidence is per se inadmissible in a criminal trial. *People v. Dunlap,* 975 P.2d 723 (Colo. 1999). However, the mere reference to such testing does not require a mistrial. *United States v. Blaze,* 143 F.3d 585 (10th Cir.1998); *People v. Preciado-Flores,* 66 P.3d 155 (Colo.App. 2002) (trial court did not abuse its discretion in denying mistrial where jury was inadvertently informed defendant had taken a lie detector test, but was not told result of the test).
>
> A Michigan court has identified several factors that should be considered in determining whether reversal is required: (1) whether the defendant objected or sought a cautionary instruction; (2) whether the reference was inadvertent; (3) whether there were repeated references; (4) whether the reference was an attempt to bolster a witness's credibility; and (5) whether the results of the test were admitted rather than only the fact that a test was

> conducted. See *People v. Nash*, 244 Mich.App. 93, 625 N.W.2d 87 (2000).

Kerber, p. 933. The constant references by both parties to the defendant's initial offer to take a polygraph coupled with evidence he did not take one when combined with the references to S. J.'s being truthful and the prosecutor's assertion in closing argument that the defendant was "lying" was clearly outside the range of professional competence of defense attorneys in Southwest Colorado when this case was tried.

While there was significant evidence that could have caused the defendant to be convicted had the defendant's trial counsel not committed the errors discussed above, the Court is convinced that there is a reasonable probability that but for the deficient performance of the defendant's attorney, the defendant would not have been convicted at trial. The Court therefore grants the defendant's C. R. Crim. P. 35(c) motion and vacates the defendant's conviction. The district attorney shall inform the Court within 30 days if it intends to try the defendant a second time.

Done and signed this 10th day April, 2009.

/s/ Jeffrey R. Wilson
Jeffrey R. Wilson
District Court Judge

[✓]XC: DA
PD

DISTRICT COURT, LA PLATA COUNTY, COLORADO 1060 E. Second Avenue, Durango, CO 81301 (970) 247-2304 CCCCCCCCCCCCCCCCCC	
Plaintiff: People of the State of Colorado **Defendant:** **LOUIS ALONZO MADDEN** CCCCCCCCCCCCCCCCCC	□COURT USE ONLY□ CCCCCCCCCCCC **Case Number:** **00 CR 76**
Todd Risberg, District Attorney, Reg. 24763 P.O. Drawer 3455, Durango, CO 81302 (970) 247-8850 Fax: (970) 259-0200	Div.: 4 Ctrm.

NOTICE OF INTENT NOT TO APPEAL OR RETRY CASE

(Filed May 11, 2009)

COMES NOW, TODD RISBERG, DISTRICT ATTORNEY, WITHIN AND FOR THE SIXTH JUDICIAL DISTRICT OF THE STATE OF COLORADO, in the name and by the authority of the People of the State of Colorado, and states as follows:

1. The People do not intend to appeal the Court's decision on the 35(c) Motion or retry the case.

Respectfully submitted this 11 day of May, 2009.

TODD RISBERG
DISTRICT ATTORNEY

/s/ Todd Risberg
Todd Risberg, Reg. 24763
District Attorney

DISTRICT COURT LA PLATA COUNTY, COLORADO 1060 EAST 2nd AVE Durango, COLORADO 81301 CCCCCCCCCCCCCCCCCC THE PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. LOUIS MADDEN, Defendant CCCCCCCCCCCCCCCCCC DOUGLAS WILSON, Colorado State Public Defender THOMAS R. WILLIAMSON No. 15329 Deputy State Public Defender 101 West 11th Street, Suite 108 Durango, CO 81301 Phone: (970) 247-9284 Fax: (970) 259-6497 E-Mail: durango.defenders@state.co.us	□COURT USE ONLY□ CCCCCCCCCCCC **DIVISION 4** **Case Number: 00CR76**
REQUEST FOR (1) ORDER THAT MR. MADDEN IS NO LONGER REQUIRED TO REGISTER (2) REFUNDING OF COSTS AND FEES ASSESSED IN THIS CASE	

(Filed May 27, 2009)

Defendant requests this Court to issue orders (1) that indicates he no longer has to register as a sex

offender and (2) that fees and costs he paid pursuant to his conviction in the case be returned to him.

AS GROUNDS the following is stated:

1. On April 10, 2009, this Court vacated the Defendant's conviction in this case and on May 11, 2009, the District Attorney indicated, by motion, that he would not intend to prosecute this case. As a result, the Defendant's remaining conviction has been vacated.

2. Defendant has contacted his local police authority and was instructed to obtain a court order that provides that he no longer is required to register as a sex offender. Defendant requests this Court to issue an order indicating he no longer has to register for this case.

3. While the time Mr. Madden served in the Department of Corrections cannot be made up for, the court should order the return of fees and costs that Mr. Madden has paid as part of is [sic] sentence in this case. Court records indicate that the Defendant has paid approximately $1977.75 of the assessed costs, fees and surcharges in the case ($757.75 of these costs included restitution):

Accounts Receivable	Assessed	Applied	J/S Recd Rel Cse	Balance
Court Costs	$30.00			$30.00
Drug Standardized Assessment	$45.00			$45.00

Drug Testing – Cost Recovery on T&C	$25.00		$25.00
Restitution	$910.00	$757.75	$152.25
Sex Offender Identification Fund	$128.00		$128.00
Special Advocate Surcharge	$1,000.00	$1,000.00	
Sex Offender Surcharge	$2,000.00		$2,000.00
Time Payment Fee	$25.00		$25.00
Victim's Assistance Fund	$125.00	$95.00	$30.00
Victim Compensation Fund	$125.00	$125.00	

Defendant requests this Court to issue orders (1) that indicates he no longer has to register as a sex

offender and (2) that fees and costs he paid pursuant to his conviction in the case be returned to him.

DOUGLAS WILSON
COLORADO STATE
PUBLIC DEFENDER

/s/ Thomas R. Williamson
Thomas R. Williamson, 15329
Deputy State Public Defender

[Certificate Of Service Omitted]